X

84568-9

NO. _____

APPEAL NO. 63644-8-I

SUPREME COURT

OF THE STATE OF WASHINGTON

MICHAEL A. GRASSMUECK, INC. AS CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF JOAN MELNIK,

RESPONDENT,

v.

TIMOTHY C. MCSHANE AND JULIE S. MCSHANE, HUSBAND AND WIFE, AND THE MARITAL COMMUNITY COMPOSED THEREOF,

PETITIONER,

RESPONDENT ANSWER

Tim Callahan, WSBA #18490
600 1st Avenue, Suite 414
Seattle WA 98104
(206) 783-4104

TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION.....	1
II. RESPONDENT IDENTITY.....	1
III. STATEMENT OF THE CASE.....	1-6
IV. ARGUMENT.....	6-19
A. McShane's petition does not meet the requirements of RAP 13.4(b); the Court of Appeals opinion does not conflict with any Supreme Court or Court of Appeals decision nor does McShane's petition involve any issue of substantial public interest that should be determined by the Supreme Court.	
V. CONCLUSION.....	19

TABLE OF AUTHORITIES

A. CASE LAW

	Page(s)
Allstate Insurance v. Khani, 75 Wn. App. 317, 877 P.2d 724 (1994).....	15
Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 160 P.3d 1025 (2007).....	18
Bank of America, N.A. v. Owens, 153 Wn.App 115, 221 P.3d 917 (2009).....	12-13
Bartley-Williams v. Kendall, 134 Wn.App. 95, 138 P.3d 1103 (2006).....	19
Brenner v. Port of Bellingham, 53 Wn. App. 182, 765 P.2d 1333 (1989).....	16-17
Crumpacker v. DeNaples, 126 N.M. 288, 968 P.2d 799 (N.M. Ct. App.).....	17-18
Dike v. Dike, 75 Wn.2d 1, 448 P.2d 490 (1998).....	13-14
Hammes v. Brumley, 659 N.E.2d 1021, (Ind. 1995).....	17
In re Estate of Black, 153 Wn.2d 152, 102 P.3d 796 (2004).....	17
Kommavongsa v. Haskell, 149 Wn.2d 288, 67 P.3d 1068 (2003).....	18
Linklater v. Johnson, 53 Wn. App. 567, 768 P.2d 1020 (1989).....	19
Miller v. Campbell, 164 Wn.2d 529, 192 P.3d 352 (2008).....	18
Morris v. Burris, 160 Wn.2d 745, 161 P.3d 956 (2007).....	17
Purse Seine Owners Ass'n, 92 Wn. App. 381, 387, 966 P.2d 928 (1998), rev. denied 137 Wn.2d 1030, 980 P.2d 1284 (1999).....	11-12

TABLE OF AUTHORITIES

A. CASE LAW (continued)

	Page(s)
Rose v. Fritz, 104 Wn. App. 116, 15 P.3d 1062 (2001)	7-11
Rousseau v. Diemer, 24 F. Supp. 2d 137, 143-44 (D. Mass. 1998)	17
Skagit Surveyors and Engineers, LLC v. Friends of Skagit County, 135 Wn. 542, 958 P.2d 962 (1998)	15-16
Spahi v. Hughes-Northwest, Inc., 107 Wn. App. 763, 27 P.3d 1233 (2001)	14
Sprague v Sysco Corp., 97 Wn. App 169, 982 P.2d 1202 (1999), rev. denied 140 Wn.2d 1004, 999 P.2d 1262 (2000)	17-18
State v. A.N.W. Seed Corp., 116 Wn.2d 39, 802 P.2d. 1353 (1991)	14
Union Bay v. Cosmos Development, 127 Wn.2d 614, 902 P.2d 1247 (1995)	15-16

B. SUPERIOR COURT CIVIL RULES (CR)

CR 4(g)(7)	17
CR 17(a)	3
CR 54(a)	12
CR 59	4
CR 60(b)(4)	3
CR 60(b)(5)	3
CR 60(b)(11)	3

C. RULES OF APPELLATE PROCEDURE (RAP)

RAP 11.4(j)	5

TABLE OF AUTHORITIES

C. RULES OF APPELLATE PROCEDURE (RAP) (continued)

	Page(s)
RAP 13.4(b).....	6

D. REVISED CODE OF WASHINGTON (RCW)

RCW 4.28.080(5).....	16

E. U.S. BANKRUPTCY CODE

11 U.S.C. Section 362.....	3
11 U.S.C. Section 541.....	18
11 U.S.C. Section 554(d).....	18

I. INTRODUCTION

On March 15, 2010, the Court of Appeals-Division One, in an unpublished opinion, reversed the trial court order granting McShane's motion to reconsider, the order vacating the default judgment and order of dismissal.

The Court of Appeals affirmed the trial court order denying McShane's motion to vacate the default judgment.

The Court also denied McShane's motion for reconsideration, motion to supplement the record and motion to publish.

II. RESPONDENT IDENTITY

Respondent Michael A. Grassmueck, Inc. (Grassmueck) is the Chapter 7 Trustee for the Bankruptcy Estate of Joan Melnik, U.S. Bankruptcy Court for the District of Oregon, #03-64832-aer7. CP 104-108.

Grassmueck is the plaintiff herein. CP 104-111, CP 236-237, CP 240-255.

III. STATEMENT OF THE CASE

Melnik filed a Chapter 7 voluntary petition on June 11 2003; she was granted a discharge on October 3, 2003. CP 70-71.

On June 13, 2005, Melnik sued her former landlord, Timothy C. McShane and Julie S. McShane, husband and wife, for injuries suffered when she fell on McShane's

rental property on June 15, 2002. CP 218-222.

The McShanes were served with summons and complaint on August 22, 2005. CP 60, CP 198-203.

The McShanes failed to appear and Melnik obtained an order of default on November 2, 2005 and a default judgment on August 4, 2006. CP 167-168, CP 223-225.

On May 2, 2008, the McShane's filed a motion to vacate the default judgment arguing:

> (1) insufficient service of process;
>
> (2) Melnik failure to provide notice of the rental property's alleged defective condition; and
>
> (3) Melnik's failure to list the personal injury claim in her bankruptcy was fraud or misrepresentation.
>
> CP 42-47.

On May 6, 2008, Melnik's Trustee filed a motion to reopen Melnik's bankruptcy after identifying assets and believing it in the best interests of Melnik's estate and its creditors to administer said assets that may be sufficient to provide a meaningful distribution. CP 104-111.

Melnik's bankruptcy was reopened and the Chapter 7 Trustee reappointed by the U.S. Bankruptcy Court per court order of May 9, 2008. CP 244-245.

On June 18, 2008, the trial court stayed further

proceedings pending either an order of the bankruptcy court granting defendants relief from the automatic stay under Section 362 of the U.S. Bankruptcy Code or further affirmative action in the trial court as initiated by the trustee for the bankruptcy estate. CP 244-245.

On September 30, 2008, Melnik filed a CR 17(a) motion to substitute Grassmueck, the Chapter 7 Trustee, as the plaintiff and real party in interest. CP 240-255.

Grassmueck filed a declaration in support of the motion asserting:

> [t]he Trustee ratifies Ms. Melnik's commencement and maintenance of this lawsuit and now asks the court to substitute it, in its capacity as the Chapter 7 Trustee, as plaintiff herein for the benefit of Ms. Melnik's creditors.
>
> CP 236-237.

McShane did not object to the substitution of the Chapter 7 Trustee as plaintiff and real party in interest. CP 24-25.

On October 13, 2008, the trial court granted the motion to amend the complaint to substitute the Chapter 7 Trustee, Michael A. Grassmueck, Inc. for Joan Melnik as the real party in interest and plaintiff. CP 226-229.

On April 8, 2009, McShane filed a second CR 60(b)(4)(5) and (11) motion to vacate the default judgment

asserting:

> (1) the judgment was obtained by fraud or misrepresentation;
>
> (2) the judgment was obtained by someone other than the real party in interest and thus void for want of jurisdiction; and
>
> (3) the judgment was void for lack personal service.
>
> CP 125-159.

McShane also asserted in his April 15, 2009 reply:

> (1) Melnik was not the real party in interest;
>
> (2) Melnik did not have standing;
>
> (3) the court did not have jurisdiction since Melnik lacked standing; and
>
> (4) a judgment obtained without jurisdiction is void and subject to non-discretionary vacation.
>
> CP 206-212.

On April 24, 2009, the trial court denied McShane's CR 60(b)(4)(5) and (11) motion to vacate the August 4, 2006 default judgment. CP 1-3.

However, on May 4, 2009, McShane filed a CR 59 motion for reconsideration of the order denying his CR60(b) motion to vacate the judgment "arguing a new theory of the case" that once the judgment was entered the Chapter 7 Trustee's substitution was impermissible since it occurred after entry of the judgment and

therefore the default order and judgment were "defective and void." McShane also asserted in his motion:

> (1) Melnik lacked standing;
>
> (2) the Trustee's substitution was not permitted under Rose v. Fritz;
>
> (3) Melnik was prohibited under the doctrine of judicial estoppel; and
>
> (4) while the Trustee's substitution may have cured Melnik's fraud it did not entitle him to any greater rights than Melnik possessed.
>
> CP 7-18.

Grassmueck argued McShane's CR 59 motion should be denied for a number of reasons, including that McShane should be prohibited from arguing a "new theory of the case" and that such an argument directly contradicted his earlier position as set forth in his October 8, 2008 reply to the CR 17(a) motion to substitute the Chapter 7 Trustee as the plaintiff and real party in interest. CP 21-26.

On May 22, 2009, the trial court granted the McShane CR 59 motion and vacated the order denying McShane's CR 60(b) motion to vacate the default judgment and subsequently dismissed the case. CP 34-38.

The parties filed their respective appeals thereafter.

Pursuant to RAP 11.4(j), the Court of Appeals set the matter for consideration without oral argument.

On March 15, 2010, the Washington Court of Appeals, Division One in its unpublished opinion reversed the trial court order granting McShane's motion to reconsider, the order vacating the default judgment and the order of dismissal.

The appellate court affirmed the trial court order denying McShane's motion to vacate the default judgment.

On April 20, 2010, the Court of Appeals denied McShane's motion to supplement the record and his motion for reconsideration.

On May 21, 2010, the Court of Appeals also denied McShane's motion to publish.

IV. ARGUMENT

A. McShane's petition does not meet the requirements of RAP 13.4(b); the Court of Appeals opinion does not conflict with any Supreme Court or Court of Appeals decision nor does McShane's petition involve any issue of substantial public interest that should be determined by the Supreme Court.

McShane cites no Supreme Court decision, which conflicts with the Court of Appeals - Division One March 15, 2010 unpublished opinion.

McShane provides no issue of a substantial public interest the Supreme Court should determine.

And, McShane's analysis of the cases cited in his petition are either inaccurate or misrepresent the facts and holdings of those respective cases as set

forth below.

McShane argues this appellate opinion conflicts with the Court of Appeals - Division Two opinion of Rose v. Fritz, 104 Wn. App. 116, 15 P.3d 1062 (2001).

Grassmueck disagrees.

The Court of Appeals's March 15, 2010 opinion does not cite Rose v. Fritz.

In Rose, the decedent died in October 1995 and husband, Arne, sued his late wife's doctors in August 1996 alleging he was the personal representative of her estate; however, he was not. In October 1997, a year later, the court clerk mailed a "notice of dismissal for want of prosecution." Rose requested a postponement of the dismissal; however, in October 1998 the defendants learned Rose was not the personal representative and moved for summary judgment on the November 13, 1998 calendar. Rose still did not submit his late wife's Will to probate and acknowledged at the hearing he had failed to do so. The trial court entered a final written order at the hearing dismissing Rose's claims "without prejudice." On November 20th, Rose finally submitted the Will to probate, obtained an order of appointment and filed a motion to amend the complaint and set aside the judgment of

dismissal.

Rose cited CR 59(a)(3), CR 60(b)(1) and CR 60(b)(11) as the basis for his motion.

On December 4, 2001, the trial court set aside the judgment and reinstated the action but concluded Rose had not satisfied the requirements of either CR 59 or CR 60.

The court certified the case for interlocutory review and the appellate court accepted certification.

According to the opinion in Rose, the only issue was "whether a plaintiff in a wrongful death action may tardily obtain an order appointing himself personal representative after a final judgment has been entered?" 104 Wn. App 116, 120.

The appellate court held Rose's actions were not excusable neglect and the trial court lacked discretion to set aside its final judgment. 104 Wn. App at 122.

According to Rose, a final judgment is an order that adjudicates all claims, rights and liabilities of the parties; it must be in writing, signed by the judge and filed forthwith. And, once a judgment is final, a court may only reopen if authorized by statute or court rule, which in most cases is either CR 59 or CR 60. Id.

Rose is a factually and fundamentally different case for these reasons:

First, in Rose the plaintiff alleged he was the personal representative of the Estate of Patricia Rose at the time he filed suit.

He was not.

Melnik made no false statements and McShane submitted no evidence of any fraud or misrepresentation by Melnik. CP 104-111 and CP 252-254.

Second, the defendants in Rose argued the wrongful death statute required Rose's appointment as personal representative to maintain the lawsuit. If Mr. Rose had timely submitted his late wife's Will to probate and been appointed personal representative he would have complied with the statutory requirements of the wrongful death statute.

Here, when Melnik learned she was not the real party in interest she moved pursuant to CR 17(a) to substitute the Chapter 7 Trustee as the plaintiff and real party in interest. CP 104-111 and CP 240-255.

Third, unlike Rose, who inexcusably failed to seek appointment, Melnik - discovering she was not the real party in interest - promptly moved to substitute the Chapter 7 Trustee who then ratified Melnik's commencement and maintenance of the lawsuit

after the bankruptcy court had granted Grassmueck's motion to reopen. CP 236-237.

And, the record is clear once counsel learned of Melnik's bankruptcy he promptly disclosed the information to McShane's counsel. CP 104-111.

Fourth, McShane's April 2009 CR 60 (b)(4)(5) and (11) motion to vacate ensured the 2006 judgment "would not be the final order disposing of all claims of the parties." And, McShane's argument - and reliance upon Rose - cannot be reconciled with the language of Rose wherein the court stated:

> "'[a] final judgment is one that fixes absolutely and finally the rights of the parties in the lawsuit on all issues of litigation and disposes of the entire controversy.'" (citing Pekin Ins. Co. v. Benson, 306 Ill.App. 3d 367, 375, 714 N.E. 2d. 559, review denied, 720 N.E.2d 1095 (1999).

104 Wn. at 120 (footnote 11).

Here, McShane conducted discovery - sought to limit discovery - and filed numerous motions in the trial court; such actions can only be construed as meaning "that until the rights of the parties on all issues of the litigation were determined the entire controversy would not be final since a final judgment is one that fixes absolutely and finally the rights of the parties on all issues of the litigation and disposes of the

entire controversy."

And, finally, the October 2008 order amending the complaint and substituting the Chapter 7 Trustee as plaintiff and real party in interest was brought pursuant to CR 17(a). And, as stated, McShane did not object to the substitution of the Chapter 7 as granted by the trial court on October 13, 2009. CP 21-26.

McShane - like Rose - filed motions based upon CR 59 and CR 60(b).

Melnik did not.

Nor did McShane argue or even cite to Rose in either his May 2008 motion to vacate or his subsequent April 2009 motion to vacate. CP 39-103, CP 122-159.

Rose v. Fritz has no application to McShane's petition.

McShane's characterization the appellate court cite to Purse Seine Owners Ass'n v. State was a "workaround" is simply wrong. In its March 15th opinion, the Court of Appeals held at the time of the Trustee's substitution McShane's motion to vacate was pending and accordingly the judgment was not final. What McShane fails to understand - or reconcile - is the specific language of the trial court's October 2008 order wherein the court ruled:

> 5. [i]t is further ORDERED that any action to execute upon the existing default judgment is STAYED pending the completion of discovery and the court's ruling on the defense motion to vacate said judgment.

CP 226-229.

And, McShane's argument and reasoning "the default judgment was final and therefore the Trustee could not be substituted as the real party in interest" was according to the Court of Appeals's opinion:

"faulty."

In Purse Seine Owners Ass'n, the association filed suit seeking a declaratory judgment. The trial court declined to grant relief and the appeals court affirmed. The State contended the appeals court did not have jurisdiction because Purse Seine's appeal of the denial of declaratory relief was interlocutory. The appeals court ruled a declaratory judgment has the force and effect of a final judgment and a judgment is considered final on appeal if it concludes the action by resolving plaintiff's entitlement to the relief requested and the ruling may be appealed as a final judgment. See CR 54(a). 92 Wn. App. 381, 387, 966 P.2d 928 (1998), rev. denied 137 Wn.2d 1030, 980 P.2d 1284 (1999)).

McShane's analysis of Purse Seine Owners Ass'n is:

"faulty."

In Bank of America, N.A. v. Owens, 153 Wn.App 115, 221 P.3d (2009) the court cited Purse Seine Vessel Owners v. State, 92 Wn. App. 381, 966 P.2d 928 (1988) that a final judgment concludes the action by resolving the plaintiff's entitlement to the requested relief.

Bank of America does not support McShane's petition.

McShane's cite to Dike v. Dike is also misplaced. In Dike, Robbin Dike's attorney, was cited for contempt of court when he refused to answer the court's inquiries as to Dike's whereabouts. According to Dike, when a court has jurisdiction over the parties and subject matter no error in the exercise of such jurisdiction can make the judgment void; a judgment rendered by a court of competent jurisdiction is not void merely because of an irregularity or error of law." 75 Wn.2d 1, 8, 448 P.2d 490 (1998). According to Dike, a judgment - even an erroneous one - must be obeyed; a party refusing to do so is liable for contempt. 75 Wn.2d at 8.

McShane failed to understand the 2006 judgment was not a final order if it was so final why did the October 2008 court order contain this language:

> any action to execute upon the existing default judgment is STAYED pending the completion of discovery and the court's ruling on the defense motion to vacate

said judgment.

CP 226-229.

Dike does not support McShane's petition.

Nor does Spahi v. Hughes, 107 Wn.App. 163, 27 P.3d 1233 (2001) - an appellant's failure to supersede a judgment on appeal - support McShane's petition. Nor does, State v. A.N.W. Seed Corp., 116 Wn.2d 39, 802 P.2d 1353 (1991), wherein the Supreme Court was asked to determine the measure of restitution for an unsuperseded judgment later reversed on appeal. According to State, a trial court judgment is presumed valid and unless superseded a judgment creditor has specific authority to execute on said judgment citing RAP 7.2 (c) and RAP 8.1, which provide for supersedeas in the trial court. 116 Wn.2d at 44.

Here, McShane attacked the order and judgment under CR 60(b) asserting it was void for lack of jurisdiction. This motion was pending when the court granted substitution of the Trustee pursuant to CR 17(a) and stayed the proceedings pending discovery and its subsequent rulings.

The judgment was vacated pursuant to CR 59 and Grassmueck appealed.

State v. A.N.W. Seed Corp. has no application to McShane's petition.

McShane also cites Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 326-327, 877 P.2d 724 (1994) as authority that a default order and judgment "in the name of a person not the correct real party in interest is not simply voidable but void" and the trial court has no discretion but to vacate such a judgment.

The facts in Allstate Ins. Co. v. Khani are however not as McShane argues.

In Allstate, defendant Khani brought a CR 60(b)(5) motion to vacate a default judgment asserting it was "void" for lack of personal jurisdiction. The trial court denied Khani's motion and he appealed. The appellate court reversed, ruling Khani's evidence submitted in his CR 60(b)(5) motion met his burden of proof and the judgment was void for lack of personal jurisdiction.

Khani was never served. McShane was served.

The facts of Allstate Ins. Co. v. Khani and its holding do not support McShane's argument that a real party in interest defect is jurisdictional and can be raised at anytime.

McShane also cites Skagit Surveyors and Engineers, LLC v. Friends of Skagit County 135 Wn.2d 542, 556, 956 P.2d 962 (1998) and Union Bay Preservation Coalition v. Cosmos Development & Admin. Corp., 127 Wn.2d 614, 618, 902 P.2d 1247 (1995) as authority that a real

party in interest defect is jurisdictional and maybe raised at anytime. In Skagit Surveyors and Union Bay, the issues presented were whether the superior court acquired jurisdiction to make rulings in an appeal under the Administrative Procedure Act (APA) when service was made on the attorneys of record in lieu of service on the parties themselves. Skagit Surveyors and Union Bay both held that only service on the parties themselves invoked the court's appellate jurisdiction.

Again, neither Skagit or Union Bay support McShane's petition.

The court did have jurisdiction over McShane when it denied his CR 60(b) motion to vacate.

McShane also cites Brenner v. Port of Bellingham, 53 Wn. App. 182, 765 P.2d 1333 (1989) but fails to explain how it supports his petition.

In Brenner, the issue was whether the court acquired jurisdiction over Brenner to enter a default judgment when the Port of Bellingham failed to comply with the statutory requirements of RCW 4.28.140 - service by publication. The court ruled there must be "strict compliance" with the statute and when Brenner met her burden of proof by presenting evidence establishing the affidavit upon which service by publication was predicated did not comply with RCW 4.28.140 the burden

shifted to the Port who then failed to meet its burden by producing such evidence.

McShane failed to meet his burden of proof under CR 60(b)(4)(5)(11). He was not served by publication; he was served pursuant to RCW 4.28.080(15). See CR 4(g)(7).

Brenner does not support his petition.

And, McShane's petition is not supported by Morin v. Burris, 160 Wn.2d 745, 161 P.3d 956 (2007) (informal notice of appearances and the doctrine of substantial compliance in relation to CR 60(b) motions to vacate default judgments) or In re Estate of Black, 153 Wn.2d 152, 169, 102 P.3d 796 (2004) (application of summary judgment to the admission of a lost will and RAP 9.10 requirements concerning supplementation of the appellate record).

Washington courts have routinely permitted the substitution of a bankruptcy trustee as a real party in interest for a plaintiff-debtor; however, throughout these proceedings McShane repeatedly failed to understand "standing" and "real party in interest" are distinct legal doctrines.

These legal doctrines were distinguished in Sprague v. Sysco Corp., 97 Wn. App. 169, 176-180, 982 P.2d 1202 (1999), rev. denied 140 Wn.2d 1004 (2000)

citing: Rousseau v. Diemer, 24 F. Supp. 2d 137, 143-44 (D. Mass. 1998), Hammes v. Brumley, 659 N.E.2d 1021, 1030 (Ind. 1995) and Crumpacker v. DeNaples 126 N.M. 288, 296 968 P.2d 799 (N.M. Ct. App) when the court reversed the trial court, ruling substitution of a bankruptcy trustee with relation back is permitted and a trial court abuses its discretion by denying the substitution motion.

Further, Sprague v. Sysco Corp. is cited with approval in Miller v. Campbell, 164 Wn.2d 529, 537, 192 P.3d 352 (2008) holding that courts permit the substitution of a bankruptcy trustee as real party in interest of a debtor's claim not disclosed in bankruptcy where the amendment changes nothing except who may benefit. See also, Kommavonga v. Haskell, 149 Wn.2d 288, 317, 67 P.3d 1068 (2003), wherein this court held: the test for relation back is "whether the defendant had notice and accordingly was not prejudiced and whether the real party in interest ratified the lawsuit or sought to be substituted as plaintiff within a reasonable time after objection."

Clearly, a bankruptcy trustee is a separate entity and not estopped from pursuing a personal injury claim on behalf of the bankruptcy estate and its creditors. Arkinson v. Ethan Allen Inc.,160 Wn.2d 535, 160 P.3d 1025 (2007). And, Washington case law recognizes that

property neither abandoned nor administered remains property of the estate even after the estate is closed pursuant to 11 U.S.C. Section 541 and 554(d). Bartley-Williams v. Kendall, 134 Wn. App. 95, 139 P.3d 1103 (2006). See also, Linklater v. Johnson, 53 Wn. App. 567, 570, 768 P.2d 1020 (1989).

Grassmueck's substitution is recognized by case law; McShane's CR 59 argument substitution was impermissible, without merit and properly reversed on appeal.

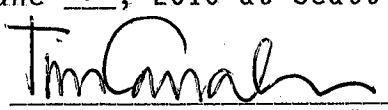
V. CONCLUSION

The substitution of Chapter 7 bankruptcy trustee Grassmueck pursuant to CR 17(a) is supported by case law and sound public policy.

The Washington Supreme Court should deny McShane's petition for discretionary review; his arguments do not meet the requirements of RAP 13.4(b).

The Court of Appeals-Division One opinion is well reasoned and consistent with Supreme Court opinion and other case law interpreting the role of a bankruptcy trustee as a real party in interest and plaintiff.

RESPECTFULLY SUBMITTED June 16, 2010 at Seattle, Washington.



Tim Callahan, WSBA #18490
Attorney for Respondent
Michael A. Grassmueck, Inc.
Chapter 7 Trustee for the
Bankruptcy Estate of Joan
Melnik